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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,738	11/11/2003	Kristi Bryant	KCX-707 (19616)	4994
22827	7590	02/02/2006	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 02/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,738

Applicant(s)

BRYANT ET AL.

Examiner

Melanie J. Hand

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date various(3).
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statements

The information disclosure statement (IDS) submitted on February 12, 2004 and September 2, 2004 were filed after the mailing date of the Application on November 11, 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudo et al (U.S. Patent Application Publication No. 2003/0187415).

With respect to **Claims 1,2,10,12,20,21,29**: Kudo teaches a colored panty liner 1 that is disposed within an undergarment of matching non-white color. Liner 1 is comprised of liquid-permeable topsheet 14, intermediate sheet 13, absorbent sheet 12 and liquid-impermeable backsheet 11. (¶ 0053) Both liner 1 and the undergarment match in color. Kudo teaches liquid passage holes 14 of circular shape embossed in a regular arrangement on topsheet 14 to enhance the clothlike feeling of said topsheet. (¶¶ 0058,0060) Kudo does not teach embossing such a pattern on the undergarment, however it would be obvious to one of ordinary skill in the art to do so as enhanced softness of the undergarment would also be desirable.

With respect to **Claim 3**: Kudo teaches that each of topsheet 14, intermediate sheet 13, core 12 and backsheet 11 are colored to match each other and the undergarment. (¶ 0079)

With respect to **Claims 4-8,14-18, 22-27**: Kudo teaches a color disposed entirely over topsheet 14 and backsheet 11, but does not teach a pattern disposed thusly, however as stated previously, the impact on of modifying the monochromatic matching “design” taught by Kudo to be comprised of a pattern to the function of the invention of Kudo would be nonexistent and therefore it would be obvious to one of ordinary skill in the art to modify the monochromatic matching scheme taught by Kudo to be comprised of a pattern. Similarly, the impact on functionality of modifying the monochromatic scheme taught by Kudo so as to involve a longitudinal strip having a pattern while leaving the remainder to have the monochromatic scheme, disposing the pattern over a portion of or the entirety of backsheet 11, or disposing said pattern on only portions of backsheet 11 that are outwardly visible when placed in said undergarment, would each be modifications that are obvious to one of ordinary skill in the art.

With respect to **Claim 9**: Kudo teaches wing portions 10 formed from the portions of topsheet 14 and backsheet 11 that extend beyond the side edges of core 12 and are sealed together. (¶ 0103)

With respect to **Claim 11**: Kudo does not teach a printed pattern on either topsheet 14 or backsheet 11, however it would be obvious to one of ordinary skill in the art to print a pattern as opposed to embossing said pattern, as they are equivalent methods of creating a pattern that do not impact the absorbent and concealment functions of the liner and undergarment set taught by Kudo. In the instant case substitution of equivalent methods requires no express motivation, as long as the prior art recognizes equivalency, *In re Fount* 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *Graver Tank & Mfg. Co. Inc. v. Linde Air Products Co.* 85 USPQ 328 (USSC 1950).

With respect to **Claims 13,19**: Please see the rejection of Claim 1 in addition to the following: Kudo does not teach aligning the pattern on the topsheet with the matching pattern on the undergarment. Kudo teaches a monochromatic scheme that allows concealment of liner 1. Altering the scheme to comprise a pattern has been established herein as an obvious modification to one of ordinary skill in the art as both the monochromatic scheme and a matching pattern scheme allow concealment of liner 1. Therefore since matching the patterns on liner 1 and the undergarment already accomplish concealment, aligning those patterns is considered herein to simple be an alternate method of concealment. In the instant case substitution of equivalent methods requires no express motivation, as long as the prior art recognizes equivalency, *In re Fount* 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152 USPQ

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618 (CCPA 1967); *Graver Tank & Mfg. Co. Inc. v. Linde Air Products Co.* 85 USPQ 328 (USSC 1950).

With respect to **Claim 28**: Please see the rejections of Claims 1 and 9 as collectively, these rejections address the limitations set forth in Claim 29.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

**TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read 'T. Zalukaeva', with a long, sweeping horizontal line extending to the right.